The Solicitors' Journal

VOL. LXXXV. **Saturday, March 15, 1941.** No. 11

Editorial, Publishing and Advertisement Offices: 29–31, Breams Buildings, London, E.C.4. Telephone: Holborn 1853.
SUBSCRIPTIONS: Orders may be sent to any newsagent in town or country, or, if preferred, direct to the above address.
Annual Subscription: £3, *post free*, payable yearly, half-yearly, or quarterly, in advance. *Single Copy:* 1s. 4d. *post free*.
CONTRIBUTIONS: Contributions are cordially invited, and must be accompanied by the name and address of the author (not necessarily for publication) and be addressed to The Editor at the above address.
ADVERTISEMENTS: Advertisements must be received not later than first post Thursday, and be addressed to The Manager at the above address.

Current Topics.

Messengers-at-Arms.

AMONG the numerous technical expressions with which the Scots practitioners are doubtless familiar, but which have a foreign look to those on this side of the Tweed, are the officials called messengers-at-arms. Under this somewhat grandiose name are known those functionaries resembling sheriff's officers who carry into effect warrants issued by the courts, but differing from the sheriff's officers in that whilst the commissions of the latter extend no further than the territorial jurisdiction of the sheriff, usually a county or one or two counties, that of the messengers-at-arms extends throughout Scotland. The sheriff in Scotland, it has to be remembered, does not correspond with him who is known under that name in England, but corresponds more or less to the county court judge, with this difference, that the Scottish sheriff exercises criminal as well as civil jurisdiction. As is stated in an extremely interesting article in the current number of the *Scottish Law Review*, the sheriff in Scotland is entitled, if so disposed, like other officers of royalty, to carry a red baton, two feet long, this being, we are told, the symbol of sasine in a heritable sheriffship as late as 1747; nowadays, it is scarcely necessary to add, the sheriff escapes the burden of carrying about with him any such baton, doubtless considering the carrying out of his judicial duties quite sufficiently onerous.

Protection of Deeds and Documents.

SOLICITORS in vulnerable areas will have read with the greatest interest and satisfaction of the new arrangement made by the Council of The Law Society with a firm of photographers who are able to produce copies of deeds, ledgers and other documents at low cost by a new photographic process. This enables any number of documents to be rapidly copied. A small tin occupying only a few inches of space can contain a miniature film containing copies of hundreds or thousands of documents. If the originals are destroyed, enlargements on paper of each picture can be made or the film can be read with the aid of a magnifying glass. A further method of using the film is to run it through a simple magic-lantern type of projector and any documents can then be copied. The apparatus has been installed in The Law Society's offices and the charge for a film is at the rate of £5 per thousand pages with a minimum of £5. If for any reason it is impossible to bring the deeds, books or other documents to the Society's offices, the firm of photographers will visit solicitors at their own offices, only charging travelling and incidental expenses in addition to the ordinary charges. The Secretary of The Law Society will supply further details of the scheme on application to him. The February issue of *The Law Society's Gazette*, besides announcing this departure, contains some answers to queries on the course to be followed where deeds or documents in the possession of solicitors have been destroyed by enemy action. The Council quotes a recent statement by the Attorney-General, who, in reply to a question in the House, stated that there was no intention to introduce legislation on the subject. In the Council's view, the ordinary rule of secondary evidence applies to cases where documents are lost or destroyed, and it is difficult to see how this well-settled branch of the law can be improved. Where title deeds of land have been destroyed, the Council suggests that the most convenient course is to register the title in the Land Registry. The Chief Land Registrar has expressed his opinion that mere damage to or destruction of deeds is in itself no bar to registration. An application for registration should be accompanied by the best available evidence of title and a statutory declaration giving a full account of the circumstances under which the deeds were damaged or destroyed, and a clear statement that no person other than the applicant has any interest in them by way of lien for any advance or otherwise. Where there is an examined abstract or other good evidence of title, absolute or good leasehold title can normally be granted. Possession over such a period as to cure documentary defects may also provide the basis for granting an absolute or good leasehold title. However, as the Council points out, the more satisfactory course is to take steps to prevent a situation arising where original documents are destroyed and can only be replaced at great expense.

Civil Judicial Statistics.

FOR the usual volume of Civil Judicial Statistics which would normally have been printed for the year 1939 there has been circulated, for reasons of economy, a short summary and table of the principal figures. Further details can be obtained, if necessary, on application to the County Courts Branch of the Lord Chancellor's Department, County Court Buildings, Thame, Oxon. The figures are particularly interesting, as they reflect the year of crisis before the war which many people feel was in some ways more unpleasant than the war itself. The number of county court proceedings showed a decrease of 13·3 per cent. as compared with the preceding year, from 1,292,774 to 1,121,202. Of the plaints entered, 4·3 per cent. were for amounts over £20. Of the actions for trial 54 per cent. were determined without hearing or in the absence of the defendant. Of the actions determined on hearing, 61 per cent. were determined before a judge and the remaining 39 per cent. before a registrar. Judgment summonses heard declined from 232,659 in 1938 to 204,176, and executions against goods from 458,403 to 334,579. In the High Court the total proceedings in the three Divisions showed a decrease of 3 per cent. as compared with the preceding year, from 103,821 to 100,705. In the Chancery Division these was an increase of 843 to 10,517. In the King's Bench there was a decrease of 2,833, from 83,351 to 80,518, and in the Probate, Divorce and Admiralty Division there was a decrease of 1,126, from 10,796 to 9,670. The number of matrimonial petitions filed during 1939 was 8,827, which was less by 1,523 than in 1938. The petitions for dissolution of marriage filed during 1939 included 2,813 for desertion, 521 for cruelty, 208 for lunacy and sixty for presumed decease. There were four petitions for nullity of marriage on grounds of lunacy. Applications for leave to present a petition for divorce before three years had passed since the date of marriage were made in sixty cases, and the petitions were allowed in twenty-four cases. The total number of decrees *nisi* for dissolution of marriage was 8,248, 3,651 being on husbands' petitions and 4,597 on wives' petitions. Matrimonial causes to the number of 4,046, of which 2,286 were

Poor Persons' cases, were tried at the assize towns exercising this jurisdiction. The total number of Poor Persons' proceedings increased by thirty-one to 4,008, matrimonial causes forming 95 per cent. of the total. These increased by 166 to 2,194. Poor persons were successful in 97 per cent. of the causes tried to which they were parties. Of appeals, those to the House of Lords were forty-five as against forty-three in 1938, and in the Court of Appeal those of 1939 were 516 as against 574 in 1938, those from county courts being 149 and 176 respectively. Appeals and special cases from inferior courts to the High Court totalled 248 as against 263 in the preceding year. Finally the Judicial Committee of the Privy Council showed a drop from 107 in 1938 to ninety-six in 1939. The growing restrictions on commercial activity since 1939 have made themselves felt in the courts, and further decreases in the figures must be expected to appear in the next summary of statistics.

The Stock Exchange and Solicitors.

IT is perhaps natural that some criticisms should have been made of the proposed new rules for the reform of Stock Exchange practice, particularly by certain classes who stand to lose by the proposed reforms. A circular issued by a provincial firm of stockbrokers was published in *The Times* of 4th March, and suggests that the intention behind the proposals is to centralise in the London Stock Exchange the whole of the stock jobbing of the country, in order to reduce the expenses of the London market. As there is a very natural desire, the circular states, not to raise commission charges to the public, it follows that the reduction in expenses must be at the cost of the provinces, for there is no indication that London is doing anything on its own account to reduce expenses. The aggregate of business, the circular continues, which is initiated in the country, and already transacted in the country, is such that there need be no difficulty in continuing to provide the existing facilities assuming always that the provincial broker does not agree to the present proposals. Dealing with this, *The Times* points out that the Committee for General Purposes expressly stated in their explanatory memorandum that if genuine jobbing markets independent of or even in competition with London could be established in one or more of the provincial exchanges, such a development might be in the interests of the public. London, however, could not be expected to provide facilities for businesses organised, not in co-operation, but in competition, with the London market. With regard to the remuneration of solicitors, the circular states that the business which solicitors pass on will not be sufficient to cover the cost of their annual subscription to the register. It may well be, it continues, that if there is not sufficient inducement, the provincial broker will lose the whole of the business. Owing to the competition between different forms of securities, it is said, if it is left to the solicitor to choose between mortgages or securities and the reward is larger for drawing up the deed of mortgage than it is for suggesting Stock Exchange securities, the mortgage is bound to win. The reply to this, we would suggest, is that while it would be idle to deny that solicitors are actuated by questions of remuneration in selecting one of two courses of equal advantage to the client, it should be remembered that a solicitor's paramount duty is to his client, and in the majority of cases the client's advantage will be the test he will have to apply in choosing securities for investment.

Grants for Air-Raid Shelters.

UNDER Pt. III of the Civil Defence Act, 1939, the Minister of Home Security may by order specify areas in which provision of air-raid shelters may be required to be made by the occupiers of factories, mines and commercial buildings. Recently the Minister specified a number of additional areas in the country. It has been pointed out that there may be cases in these newly specified areas of firms who are occupants of commercial premises in which they themselves have already put in shelters, the landlord not having originally been under any obligation to do so. So far as commercial buildings are concerned, the owner is the only person who can be required by the local authority to provide air-raid shelter, and the same is true of mines, although in the case of factory premises the notice is served on the occupier (Civil Defence Act, 1939, s. 16). Under s. 22 (1) Exchequer grant is paid to occupiers of factory premises, and to owners of mines and commercial buildings. The hardship of cases where tenants of commercial buildings have themselves provided shelter and yet may have no right under the Act to claim grant is at once apparent. Theirs, however, is not the only grievance, for owners of such buildings are also disqualified from obtaining grant unless they can be said to fall strictly among those who have "provided" or "secured the provision" of air-raid shelter. This, in the vast majority of cases, they have not done. In reply to a recent inquiry from the Federation of British Industries, the Minister of Home Security has expressed his agreement with the view that in these cases grant ought not to be withheld, and has stated that he is prepared to entertain claims from the occupiers in such cases. Possibly legal justification for claims for grant by tenant firms in the position described above can be found in s. 22 (2) of the Civil Defence Act, 1939, which appears to be intended to cover the cases of commercial buildings, mines and factories where air-raid shelter has been provided by every other person than those mentioned in s. 22 (1). In asking for forms from the local authority for the purpose of making out claims for grants the tenant-occupiers of commercial premises should refer to the recent statement by the Minister, and if s. 22 (2) applies, should refer also to that subsection, as it is clearly easier to obtain payment of what is legally owing than to pray for an *ex gratia* payment.

The War Damage Bill.

IN the course of the Lord Chancellor's brilliantly lucid outline to the House of Lords of the provisions of the War Damage Bill on the motion for the second reading on 4th March, he claimed that it was "a very bold, a very ingenious and a very sound mode of facing those difficulties of the times we are in." In reply to a question by LORD ADDISON as to where in the Bill it was set out that every householder would have a free insurance up to £200 for private chattels, with an extra £100 if he is married and a further £25 for each child under sixteen, VISCOUNT SIMON repeated the public assurances that the Board of Trade would provide this as part of the scheme, and referred to that department's proposed power under cl. 68 to make payments otherwise than under policies in respect of war damage to chattels, in accordance with regulations made by the Treasury. Other matters raised by LORD ADDISON were the limitation of the risk period to 31st August, 1941, the definition of "war damage" so as to include damage done by defence works to private property, and the possible delay in getting compensation through having to apply to two different authorities, the Board of Trade and the War Damage Commission, for compensation to chattels and land respectively, if the two authorities have not a working relation with one another. On behalf of the Church of England and all those for whom he could speak, the Bishop of London expressed deep appreciation of the attitude which the Government had taken, and the help they had given. VISCOUNT SWINTON asked for fairer treatment as between mortgagor and mortgagee. LORD BARNBY put in a plea for mutual insurance organisations, some activities of which were to be precluded by cl. 86, without any right to compensation for disturbance. He also asked that in the case of the clause in Pt. II providing for payment for loss being limited to £5 in the case of chattels, the amount should be reduced to £3 or even £2. In reply to the query of LORD ADDISON concerning the risk period, the Lord Chancellor agreed that the Bill might well turn out to be only the first of possibly a series of measures, the answer being that it was necessary to establish a scheme and work it to the best of your ability even though you do not know what is coming later on. "We must see how this thing works," said the Lord Chancellor, "and if in some aspects it has to be amended, we must recognise that fact and make another scheme for the purpose of being adopted and carried into force from 31st August next." Further criticisms will probably be forthcoming when the Bill goes into committee stage in the Lords, but there should not now be any serious delay in the passage of the Bill.

Recent Decisions.

In *Bergman* v. *MacAdam* on 3rd March (*The Times*, 4th March) the Court of Appeal (SCOTT, MACKINNON and GODDARD, L.JJ.) held, reversing a judgment for the plaintiff for £500 damages in a slander action tried by CHARLES, J., that it was fair comment to say in a broadcast with regard to a professional boxer, that "speaking of old men," he would "totter along to Earl's Court" and fight the light-weight champion, and after that fight the plaintiff would be "almost certain to start thinking of a better way of earning a living."

In *Jelly* v. *Ilford Corporation* on 3rd March (*The Times*, 4th March) CASSELS, J., held that the defendants had erected a blast stack of sandbags 16 feet long and 4 feet thick in front of a public air-raid shelter under statutory authority (reg. 51 (5) of the Defence Regulations), and therefore it did not constitute a nuisance, that there was no negligence in not lighting the barrier, as they were prevented from doing so by the Lighting (Restrictions) Order, 1939, and that there was no negligence in not whitening the barrier. He further held that the plaintiff, who had emerged from lighted premises and injured herself through bumping into the barrier, was guilty of contributory negligence in failing to walk slowly or stand still until her eyes had become accustomed to the darkness.

Finance Regulations.

Consolidation and Amendments—VIII.

DURING recent weeks a number of further orders dealing with matters of war-time finance have been issued. They introduce no fundamentally new principles, but make small amendments in and additions to the existing regulations. The object of this article, therefore, is to bring the description of the situation up to date.

Compulsory Acquisition of Foreign Securities.

The power of the Treasury to acquire compulsorily foreign securities was last exercised in the case of certain American securities (85 SOL. J. 39). Another group of American stocks and bonds have since been taken over by the Treasury under the Acquisition of Securities (No. 1) Order, 1941 (S.R. & O., No. 20). All these securities had previously been registered with the Bank of England either under the Securities (Restrictions and Returns) Order, 1399 (S.R. & O., No. 966), or under the Securities (Restrictions and Returns) (No. 2) Order, 1940 (S.R. & O., No. 1590). This power has also been exercised in relation to certain India stock and the procedure followed is the same as in previous instances of the exercise of the power. By the Securities (Restrictions and Returns) (No. 1) Order, 1941 (S.R. & O., No. 141), any person owning the India stock mentioned in the schedule to the order is forbidden to sell, transfer or create a charge on the stock, and further is required to make, in the manner which has now become familiar, a return of his holding, not later than the 24th March, 1941, to the Bank of England. This order was immediately followed by the Acquisition of Securities (No. 2) Order, 1941 (S.R. & O., No. 142), which takes over on behalf of the Treasury the India stock, for which the returns are to be made, at the prices set out in the order.

The Sterling Area.

The conception of the sterling area is an important one in these schemes of financial control, for, in brief, it is the area within which a free interchange of currency, securities, etc., may take place. It was defined (84 SOL. J. 328, 508) as the British Empire (excluding Canada, Newfoundland and Hongkong), any mandated territories held under the Crown either in the United Kingdom or in the Dominions, British protectorates, protected states, Egypt, the Anglo-Egyptian Sudan and Iraq. As a result of the closer co-operation between the allies and the associated powers we now find that the Defence (Finance) (Definition of Sterling Area) Order, 1941 (S.R. & O., No. 73), has added to this area the Belgian Congo and Ruanda-Urundi.

As a consequence of the inclusion of the Belgian Congo in the sterling area a slight amendment has become necessary in the Securities (Restrictions and Returns) (No. 2) Order, 1940. This order, which has previously been discussed (84 SOL. J. 555), prohibited the sale, transfer or creation of a charge on securities in respect of which the principal, interest or dividend is payable in the currency of certain specified countries, being countries outside the sterling area; it also required the registration of these securities. The Belgian Congo was in this list of specified countries. By the Securities (Restrictions and Returns) (Amendment) Order, 1941 (S.R. & O., No. 77), the Belgian Congo has been removed, as from the 24th January, 1941, from this list.

Restriction on Payments.

The restrictions of reg. 3C do not apply to transactions between persons outside the sterling area, except when those transactions are such that a right (either actual or contingent) to receive a payment in the United Kingdom or the Isle of Man is created or transferred in favour of a person resident outside the sterling area, but within certain countries specified in later amending orders (84 SOL. J. 507, 556, 664; 85 SOL. J. 39). Owing to the change in the meaning of "sterling area" and to the large number of orders dealing with this matter, the opportunity has been taken of revoking the previous exemption orders (S.R. & O., 1940, Nos. 1257, 1346, 1575, 1635, 1778, 1958, 2050, 2079 and 2172), and re-enacting them in a consolidated and slightly amended form by the Regulation of Payments (General Exemptions) Order, 1941 (S.R. & O., No. 74). The final result is much the same, but the Belgian Congo and Ruanda-Urundi now take their places in the sterling area and not in the list of specified countries, for which, incidentally, specified modes of payment are applicable as previously described. The order prescribing the modes of payment in the case of the Belgian Congo and Ruanda-Urundi was the Regulation of Payments (Belgian Congo and Ruanda-Urundi) (No. 2) Order, 1940 (S.R. & O., No. 1577). Since this is no longer necessary it has been revoked, as from the 24th January, 1941, by the Regulation of Payments (Belgian Congo and Ruanda-Urundi) Order, 1941 (S.R. & O., No. 75).

The Export of Currency.

The taking or sending of currency out of the country has been forbidden by reg. 3 (84 SOL. J. 328, 507). Relaxation of this prohibition was allowed, to some extent in the case of travellers, by the Currency Restrictions (Travellers Exemption) Order, 1940 (S.R. & O., No. 1267). This order has now been amended by the Currency Restrictions (Travellers Exemption) Order, 1941 (S.R. & O., No. 96), which allows slightly more generous exemptions, in that, instead of the £25 sterling formerly allowed to a traveller from the United Kingdom to Eire, he is allowed, after the 1st February, 1941, to take currency to any amount.

Restrictions on the Import of Bank-notes into the United Kingdom.

Regulation 2B of the Defence (Finance) Regulations forbids, subject to exemptions granted by the Treasury, the importation of bank-notes into this country (84 SOL. J. 519). Certain exemptions from this prohibition were set out in the Importation of Notes (Exemptions) Order, 1940 (S.R. & O., No. 1515). Paragraph 1 (*a*) of this order allowed the bringing in of bank-notes to a value not exceeding £10 by any person travelling to the United Kingdom. This exemption has been somewhat limited by the Importation of Notes (Exemptions) Order, 1941 (S.R. & O., No. 95), apparently with a view to preventing members of the crew of ships or aircraft coming to the United Kingdom from making a business of bringing in notes to a value of £10 on each successive trip. This amending order makes para. 1 (*a*) of the original order applicable only to persons travelling to the United Kingdom other than persons employed or engaged in any capacity on board the ship or aircraft. This limitation came into force on the 1st February, 1941. A saving clause, however, is inserted allowing the master or a member of the crew of a ship or aircraft, which is on a voyage begun before the 1st February, 1941, to bring into the United Kingdom, at the end of that voyage, bank-notes not exceeding £10 in value.

Restrictions upon the Transfer of Securities.

Upon the transfer of securities many formalities, as regards permission of the Bank of England, have to be carried out. These have been previously described in some detail at 84 SOL. J. 339, 340, 352 and 507. The question of the transfer of Government stock by the Bank of England itself, when the owner of the stock dies, is dealt with to some extent by reg. 7B which has just been added to the Defence (Finance) Regulations by means of an Order in Council (S.R. & O., 1941, No. 127). The new regulation authorises the Bank of England to transfer the stock on the production of probate or letters of administration granted by a competent court in the Isle of Man or on the production of a certified copy of the same. The transfer may be made to the person to whom the probate or letters of administration was granted or as directed by him. But the stock shall not be transferred until a certificate from the Commissioners of Inland Revenue is produced showing that the death duties payable in Great Britain on the stock have been paid or that no such duties are payable. Furthermore, the Bank of England is to be protected and indemnified in case of any invalidity in the probate or letters of administration in question.

Criminal Law and Practice.

Mistake in Summons.

THE importance of compliance with the terms of the Summary Jurisdiction Act, 1848, s. 1, with regard to the issue of summonses was demonstrated at the Mansion House Justice Room on 4th March, when the Chief Clerk to the Lord Mayor announced—with regard to the reported conviction of J. and F. Stone Lighting and Radio, Ltd., on 28th February, at the Mansion House police court—that through a clerical error in the summons the defendant company was unaware that the case was being heard on that date, and as a consequence were not legally represented, and had no opportunity of putting in a defence. The proceedings and conviction must be regarded therefore as a nullity.

The date of hearing, as stated in the summons served on the defendant company, was 28th March, but the case was put into the court's list for 28th February. The conviction which had to be regarded as bad was one for selling an electric torch battery at a figure that was beyond the maximum price fixed by the Defence Regulations and the sentence was a fine of £20, with three guineas costs.

The relevant provision of the Summary Jurisdiction Act, 1848, is quite clear and obviously fundamental to the proceeding. It states (*inter alia*) that the summons must require the person to whom it is directed to appear at a certain time or place before the justice or justices. If the summons is framed

in such a way, even accidentally, that the defendant is given no indication of the correct time of the hearing so that he is unable to appear personally or through his legal representative justice is thwarted and a conviction consequently recorded in his absence must be bad.

It is another matter, as is well known, where a defect in the summons is either merely formal or the defendant is before the court. This, too, is provided for in s. 1 of the Summary Jurisdiction Act, 1848, the proviso to which states that no objection shall be taken or allowed to any information, complaint or summons for any alleged defect therein in substance or in form. For instance, where the summons named the defendant by a wrong Christian name and the defendant was not deceived or misled, and was the person intended to be served, the conviction could not be disturbed (*R.* v. *Norkett, ex parte Geach*, 139 L.T.N. 316). This proviso presupposes that the defect has not led to the non-appearance of the defendant, as he or his representative must be there to make the objection.

It is a little difficult to see at first what defect in the substance of the summons could be the subject of an invalid objection by or on behalf of a defendant. Possibly the words are explained by what follows, i.e., that no objection shall be taken or allowed for any variance between the information, complaint or summons and the evidence adduced on the part of the informant or complainant at the hearing. It is added, however, that if any such variance shall appear to the justice or justices to be such that the party summoned and appearing has been thereby deceived or misled, it shall be lawful for such justice or justices, upon such terms as he or they shall think fit, to adjourn the hearing of the case to some future day. In the majority of cases a defect in the substance of the summons can be treated at the hearing as a variance between the summons and the evidence.

Such variance must not go so far as to show a different offence to that charged in the summons. For instance, in *Loadman* v. *Cragg*, 26 J.P. 743, mere drunkenness was held to be a different offence from that of being drunk and guilty of riotous conduct, and a person charged with the latter offence could not be convicted of the former.

Similar in their effect to the case at the Mansion House of 28th February are those cases in which it has been argued that the summons was not duly served within s. 2 or s. 13 of the Summary Jurisdiction Act, 1848. Section 2 enables the court to proceed *ex parte* in the absence of the defendant if it be proved that the summons was duly served on the defendant a reasonable time before the time appointed for his appearance. Section 13 lays down the procedure to be followed when the defendant does not appear. The constable or other person who served the summons must declare upon oath in what manner he served the summons, and if it appear to the justice or justices that the summons was duly served they may either proceed to hear and determine the case in the absence of the defendant, or issue a warrant for the apprehension of the defendant and adjourn the hearing.

With regard to the question of what is a reasonable time for the service of the summons, one which is closely relevant to the opportunity afforded to the defendant to attend, it is interesting to observe that this is entirely a matter for the justices to decide, and their decision, once given, cannot be reviewed by the High Court (*Ex parte Williams*, 21 L.J.M.C. 46). In that case a summons was left at 8 o'clock in the morning at the house of a collier, requiring him to attend at petty sessions at a place eight miles away to answer a charge of assault at 11 o'clock the next morning. The summons was left with his wife, and he did not return until 11 o'clock at night. He had no time to get a substitute to do his work at the colliery or to collect his witnesses. He attended, however, at the next petty sessions with his witness, when he was informed that the case had been heard in his absence at the preceding sessions, and that he had been convicted and committed for a month. Erle, J., held that the magistrates' decision as to what was a reasonable time for service could not be reviewed, but expressed the opinion that the service in that particular case was reasonable and said that he failed to understand why the defendant did not send a messenger to the court.

On the other hand, in *R.* v. *Smith*, L.R. 10 Q.B. 604, it was held that there was no evidence before the justices that there had been a reasonable lapse of time between the service of the summons and the day of the hearing, and that therefore the justices could not convict. The summons was served on 10th March for hearing on 12th March, by leaving it with the defendant's mother at the house where he usually resided. At the time of the service he was on a fishing voyage and did not return until 9th April. In that case Cockburn, C.J., said that justices ought to be very cautious how they proceed in the absence of a defendant, unless they have strong ground for believing that the summons had reached him, and that he is wilfully disobeying it.

Similarly, in *R.* v. *Anwyl*, 73 J.P. 485, a chauffeur was told on 30th April by a constable that he would be summoned for a motoring offence. On 2nd May he left for another town on his master's business, telling his landlady to take in the summons if it came for him. It reached his landlady on 4th May for the hearing on 7th May. He returned on 9th May, to find that he had been convicted in his absence. The fact that the summons had not reached the defendant was not before the justices, and a rule *nisi* for *certiorari* to bring up the conviction to be quashed was made absolute. By way of contrast to this, in *R.* v. *Cambridgeshire JJ.*, 44 J.P. 168, the summons was left at the defendant's house on Saturday, 6th September, and as he had gone to Jersey, it was posted to him and it came into his hands on 10th September, the day of the hearing. His foreman asked for an adjournment, but this was refused, and the High Court later refused a rule, as the justices were satisfied that there was reasonable time to instruct a solicitor.

It is clear from these cases that where a defendant has been given no opportunity to attend, a conviction in his absence will be a nullity. Particularly, therefore, in these days is it necessary to see that the terms of the Act are strictly complied with before a case is heard in the absence of the defendant.

A Conveyancer's Diary.

Privileged Wills.

EARLY in the war I wrote a "Diary" which was rather inaccurately entitled "Nuncupative Wills." At that time we were all of us unearthing pieces of legal knowledge which we had almost forgotten that we possessed, and our first reflections on those subjects suffered from the fact that most of us had never seen war-time legal rules working in practice, while those who had done so had had the experience a very long time ago. I have, however, recently had occasion to consider the question of privileged wills in actual practice, and it seems to me to be worth some further treatment here.

Certainly since the Statute of Frauds, and, for all I know, earlier, a soldier "in actual military service" or a mariner at sea have been capable of disposing of their personalty without the formalities required from time to time for the making of ordinary wills. These privileged persons have therefore been able to make "nuncupative" wills. Their privilege was preserved by the Wills Act, s. 11, and it has been further extended by the Wills (Soldiers and Sailors) Act, 1918. By the latter Act the privilege is extended to "any member of His Majesty's naval or marine forces" not at sea who is "so circumstanced that if he were a soldier he would be in actual military service" within the meaning of s. 11 of the Wills Act (s. 2). The privileges of a soldier are to extend to "a member of the Air Force" (s. 5 (2)). A privileged person dying after the commencement of the Act (6th February, 1918) can make an informal will of realty (s. 3) or can by such a will appoint guardians (s. 4).

There is also the very important rule that a privileged person who is an infant can make a will. It is worth examining the enactments which create this exception. It seems that before the Wills Act there was no doubt that an infant over the age of fourteen shared the privileges of adults if he was a soldier in actual military service or a mariner at sea. That is to say, not only could he make a will of personalty, but could do so informally. Section 7 of the Wills Act enacted that no will of a person under twenty-one should be valid, while s. 11 provided that a soldier in actual military service or a mariner at sea should be able to dispose of his personalty as he could have done before the Act. In *Re Wernher* [1918] 1 Ch. 339, Younger, J., intimated that he had doubts whether s. 7 of the Wilis Act had not deprived infant soldiers and mariners of the right to make a will at all. The Wills (Soldiers and Sailors) Act, 1918, s. 1, declared that in order to remove doubts as to the construction of the Wills Act, 1837, "section eleven of that Act authorises and always has authorised any soldier being in actual military service, or any mariner or seaman being at sea, to dispose of his personal estate as he might have done before the passing of that Act, though under the age of twenty-one years." Pausing at the end of s. 1, we get the position that, notwithstanding the Wills Act, s. 7, a qualified infant has always been able to make a will of personalty, and to do it informally if he chooses. Section 3 (1) of the 1918 Act is as follows: "A testamentary disposition of any real estate in England or Ireland made by a person to whom section eleven of the Wills Act, 1837, applies, and who dies after the passing of this Act, shall, notwithstanding

that the person making the disposition was at the time of making it under twenty-one years of age or that the disposition has not been made in such manner or form as was at the passing of this Act required by law, be valid in any case where the person making the disposition was of such age and the disposition has been made in such manner and form that if the disposition had been a disposition of personal estate made by such a person domiciled in England or Ireland it would have been valid." This very complicated provision did two things: as we have seen, it gave to qualified adults the right to make an informal will of realty; further, it gave to qualified infants (1) the right to make a will of realty, (2) to do so informally. It is not altogether clear how far, if at all, the position of infants has been further altered by s. 51 (3) of the Administration of Estates Act, 1925, which provides that where an infant dies without having been married and would, independently of that subsection, have been entitled to an equitable fee simple in land under a settlement, he is to be "deemed to have had" an entailed interest. The learned editors of "Carson" (3rd ed., p. 478) and of "Wolstenholme" (12th ed., p. 1510) both say they do not know what the position is; and as the principal editor of that edition of "Wolstenholme" had, perhaps, the best chance of knowing what the draftsmen of the 1925 legislation intended, it would be rash to do other than leave the matter there. In practice, of course, nothing will be lost by getting an unmarried infant soldier or sailor to make a will of realty, as it will at worst be invalid like any ordinary infant's will. But, lest those dispositions of realty be invalid, great care must be taken not to mix them up with those of personalty (whose validity is certain), since the whole will would then be invalid if the dispositions of realty are bad, as in *Godman* v. *Godman* [1920] P. 261.

To sum up down to this point: (1) An adult soldier (Wills Act, 1837, s. 11), naval sailor or mariner (Wills (Soldiers and Sailors) Act, 1918, s. 2), or airman (Wills (Soldiers and Sailors) Act, 1918, s. 5 (2), and Wills Act, 1837, s. 11), may make a will of personalty (Wills Act, 1837, s. 11) or of realty (Wills (Soldiers and Sailors) Act, 1918, s. 3), without the formalities normally required by the Wills Act, 1837, provided he is "in actual military service." (2) The like privilege extends to "any mariner or seaman being at sea"; this rule is not confined to naval men or marines. (3) Any of these persons being an infant can make a will, informally if he chooses, of personalty (Wills (Soldiers and Sailors) Act, 1918, s. 1) and perhaps of realty (see above).

Two further matters arise in the special conditions of the present war. First, we have used the masculine gender throughout, but a large number of women are now members of the armed forces. The Interpretation Act, 1889, provides, of course, that where the context admits the masculine is to include the feminine; but I am not sure how much further that in itself takes us. I imagine that the framers of the Act of 1889 would have been inclined to say that there was no feminine for the words "soldier," "mariner," and "seaman." However, in the last war, a nurse employed by the War Office on hospital ships was held to be a soldier in actual military service (*Re Ada Stanley* [1916] P. 192), not to mention the decision of an Irish court that a female typist on a liner was a seaman (*Re Hale* [1915] 2 I.R. 362). I think that members of the A.T.S., W.R.N.S., W.R.A.F., and so on, are qualified *a fortiori*.

Second, there is the question of the meaning of the words "in actual military service." These words do not mean what they might seem to mean, namely, in the employ of the Crown in an armed force. They have always been treated as a translation of the Latin "*in expeditione*," a phrase also misleading, as it is not accurately translated either by "on an expedition" or "on active service." The rule has always been that a soldier (to whom must, since 1918, be added a naval sailor, a marine or an airman) may make a privileged will if he is either *in the field* or has taken some step towards joining the forces in the field. As "the field" has almost always been situated at least beyond the narrow seas, the decisions have emphasised the necessity for the testator to have made a move towards going away from these shores. Even the nurse mentioned above was under orders to embark on a hospital ship, though doubtless in an unrestricted submarine war "the field" for a hospital ship begins at least at the harbour's mouth. In the present war, however, there are active operations in this island, and it is very puzzling to know the position. On the one hand it may well be said that a person may be "*in expeditione*" in almost any unit of the home forces (though hardly in the Home Guard, who have not been called out on continuous duty) and that all such persons ought to share the privileges of their brothers and sisters in Malta, Gibraltar, Cyrenaica, Italian Somaliland and elsewhere. But on the other hand, I think the basis of the privilege must be that a person ought not to be prevented from making a will by the fact that he is engaged all the time with the labour of an arduous campaign and/or that he is in a remote place away from the services of the legal profession. Very few soldiers or airmen in this country, however arduous their activities, fulfil either of these conditions in a way comparable to a seaman or a soldier or airman in the Middle East to-day or in France in the last war or the campaign of May, 1940. I think that there is considerable scope for argument here, though on the whole I should expect the court to try to uphold these wills "*ut res magis valeat quam pereat*." The real test will come in proceedings for probate of a will of personalty made by an infant soldier in an active unit in this country, or an infant fighter pilot stationed here. Such a will, however made, will stand or fall by the interpretation of the words "in actual military service." As with infants' wills of realty, it will be worth advising such an *infant* to make a will, since he will not be the worse off by doing so than by making no will at all. But I do not recommend anyone to make an informal will unnecessarily.

Landlord and Tenant Notebook.

War Damage and Compensation for Improvements.

HAVING considered in previous issues the possible effects of war damage within the Landlord and Tenant (War Damage) Act, 1939, on a landlord's rights to dilapidations as modified by the Landlord and Tenant Act, 1927, s. 18 (1) (85 SOL. J. 66), and on a tenant's right to compensation for goodwill under s. 4 of that statute (85 SOL. J. 113), I propose now to discuss the position with regard to claims for compensation for improvements under s. 1 of L.T.A., 1927.

Less has been heard of the right to compensation for improvements than of other innovations introduced by the Act; but this does not mean that the section has had no effect. Its machinery is—I daresay this could not be avoided—somewhat cumbersome; but the mere existence of the provision has been sufficient to make landlords more amenable to negotiation designed to achieve the same result. The possible effects of war damage on agreements to pay for improvements will, however, not be discussed in this article.

Taking, as on previous occasions, a hypothetical example, I will suppose that at some time in 1935 a butcher-tenant installed permanent refrigerating plant on the demised premises (no effective objection being made by the landlord in response to the notice of intention); that the lease is now about to expire; but that before it does so expire the premises are damaged by a bomb. For the present let us assume that the damage, though substantial, does not actually include any damage to the "improvement" itself.

Prima facie, the tenant is entitled to compensation at the termination of the tenancy on quitting his holding. Further, I think he is at the outset in a better position than the claimant under s. 4 (goodwill), for that section speaks of goodwill attached to "the premises," which means, I have suggested—both by reason of the interpretation section and of the context—the building only; whereas s. 1 deals with "any improvement . . . on his holding."

And, as in the case of goodwill, the mere fact that the premises will yield less rent, owing to the war damage or any other cause, is no answer to the claim: what matters is that the improvement shall be a factor in computing whatever rent can be obtained. In the case of an improvement, either the net addition to the value of the holding as a whole, or the cost of carrying out the improvement at the termination of the tenancy, may represent the limit of the claim; and it cannot be suggested that bombing would reduce the value of the holding to nil, still less that the cost of making the improvement would be unascertainable.

But, as in the case of compensation for goodwill, intended change of user may cancel or reduce the claim; and it is common knowledge that many landlords who had at the most toyed with the idea of developing their properties in new ways have *bona fide* formed the intention of so doing when the site has been unexpectedly cleared or almost cleared. If, then, our butcher's landlord had previously rejected offers made by builders of flats or cinemas is now less disinclined to negotiate with them, and negotiations fructify, he will, I consider, have an answer to the claim despite the occasion and its nature.

There remains to be considered the landlord's right to meet the claim with an offer to renew the tenancy "at such rent, and for such term as, failing agreement, the tribunal may consider reasonable" (s. 2 (1) (*d*)). Though difficult to apply in the circumstances, and while their infinite variety makes general suggestions impossible, it can be said that this right

may prove a useful weapon of defence or counter-attack in the landlord's hands.

Let us now consider a case in which the " improvement "—and be it remembered that this, as s. 1 (1) expressly declares, may be a whole building—alone suffers war damage, or suffers most of the war damage. The Landlord and Tenant (War Damage) Act, 1939, s. 1 (1), of course absolves either party from any obligation to make good the damage. But in the result, how is the tenant's right to compensation affected? I think the concluding qualification of " any improvement " in s. 1 (1), which, after stipulating that the improvement shall be one made by the tenant or his predecessor in title, and shall not be a removable fixture, demands that it shall be one " which at the termination of the tenancy adds to the letting value of the holding," supplies the answer. It may well be that Parliament was not thinking of the possibility of destruction, but merely of the kind of improvement for which compensation was to be payable; but I would submit that the words used will exclude the possibility of any successful claim in respect of an improvement which would have been valuable but is not. If I be wrong on this point, the provisos which follow call for consideration. These limit the amount to the smaller of two figures: the net addition to the value of the holding which is the direct result of the improvement, or the reasonable cost of carrying out the improvement at the termination of the tenancy less the cost of putting it into a reasonable state of repair, but except in so far as that cost is covered by a tenant's repairing covenant. The tenant would (if I be wrong in considering that the qualification above referred to knocks out his claim altogether) prefer the " net addition " figure—but the option is not his. The landlord would have the right to have compensation assessed by reference to the cost of carrying out the improvement " subject to a deduction of an amount equal to the cost (if any) of putting the works constituting the improvement into a reasonable state of repair, except so far as such cost is covered by the liability of the tenant under any covenant or agreement as to the repair of the premises." In the circumstances visualised, the landlord would have to give a great deal of consideration to the question whether the tenant is liable for repairs. If he is not, the deduction would wipe out the claim. And whether he is may call for consideration not only of the construction of any repairing covenant (which may or may not cover buildings not in being when the lease was made), but also, if the improvement be covered, of the proper interpretation of the Landlord and Tenant (War Damage) Act, 1939. By s. 1 (1), where, by virtue of the provisions of a disposition an obligation to repair is imposed, etc., those provisions shall be construed as not extending to the imposition of any liability to make good any war damage occurring to the land comprised. At first sight, this knocks out the qualification of the deduction to be made under L.T.A., 1927, s. 1 (1) (*b*): " except so far as such cost is covered by the liability of the tenant under any covenant as to the repair of the premises." But, closely examined, I do not think the point sound. It may be that no liability to make good can be now placed upon the tenant. But it must be remembered that the provisos to s. 1 (1) of L.T.A., 1927, are not concerned with liability to repair or make good as such, but with the measurement of compensation. When computing the amount payable, then, the cost of putting the improvement into a reasonable state of repair can be modified by reference to liability imposed by a covenant, though in an action on that covenant the covenantee must, by virtue of the later statute modifying its construction, fail to make out his case.

Our County Court Letter.

Nuisance from Thistles and Rats.

In a recent case at Whitchurch County Court (*Sewell* v. *Jackson*) the claim was for £10 as damages for trespass. The plaintiff's case was that the ground around her house had been overrun with weeds and thistles, owing to the defendant's failure to cultivate his adjoining land. The dirty and untidy condition of the defendant's land had also caused it to harbour rats, which had caused damage to the plaintiff's property. The Cultivation and Land Drainage Officer to the Salop County Council had ordered the defendant to cut down the few docks and thistles found on his land. The Cultivation Officer for the Wem area expressed the opinion that the plaintiff had suffered no damage, and the defendant's own evidence was that the plaintiff had thrown old bottles and tins, and other refuse, over the hedge into his field. The result was to attract a few rats, but the grass had been cut down for five years, and 1½ acres had been used to grow potatoes. The rest of the field, containing grass, had been burnt down in May. His Honour Judge Samuel, K.C., held that there had been no actionable damage. Judgment was given for the defendant, with costs. Thistle seeds were held not to be within the principle of *Rylands* v. *Fletcher* in *Giles* v. *Walker* (1890), 24 Q.B.D. 656. A penalty for allowing the growth of injurious weeds may, nevertheless, be incurred under the Corn Production Acts (Repeal) Act, 1921, s. 1 (*c*) and Schedule. A landowner may be liable for attracting rats on to his premises, to the injury of his neighbour, by having an excessive heap of bones or manure, as in *Stearn* v. *Prentice* [1919] 1 K.B. 394.

Reservist's Contract of Service.

In *Birch* v. *Marshall's Flying School, Ltd.*, recently heard at Cambridge County Court, the claim was for damages for breach of contract. The plaintiff's case was that on the 5th June, 1939, he had entered into a written agreement, under which he was to start work as an electrician on the 31st July at a salary of £5 a week. Prior to the agreement, the plaintiff had disclosed that he was a Class E reservist in the R.A.F. On the 24th August the plaintiff had received a mobilisation notice, but this was followed on the 5th September by another notice, under which the plaintiff reverted to his position in the R.A.F., provided he remained where he was. On the 10th September the plaintiff was dismissed by the defendants, on the ground that they were only authorised to retain employees in the R.A.F. reserve whose services they considered essential. The plaintiff, however, did not agree that the diminution in number of civil aircraft had rendered his services superfluous to the defendants. The case for the defendants was that the Air Ministry had left it to the discretion of any training school to decide whether reservists were essential for the work of the school. The contract had been entered into in peace time, and it was silent on the question of the effect of war on its provisions. The plaintiff's mobilisation notice involved such a vital change in circumstances that any contract remaining thereafter could not be the same as that entered into. Judgment was given for the defendants, with costs.

Winding-up Orders.

In a recent case at Colchester County Court (*In re Clacton Joinery and Manufacturing Co., Ltd.*), a petition was heard for the compulsory winding up of the company, by reason of its inability to pay its debts. The case for the petitioning creditors was that their debt was £75, and the company had lost £2,604 14s. 10d. since 1931. The only profit, viz., £4 9s. 8d., had been made in 1937, and on one occasion a composition was paid of 5s. in the £. The company opposed the petition, and the evidence of the managing director was that he was the largest creditor for money lent. He had endeavoured to create an industry in Clacton, and the freehold property was worth £5,000. Had it not been for the outbreak of war, the sale of the assets would have covered all the debts. It was accordingly submitted that, in view of the Courts (Emergency Powers) Act, 1939, s. 1 (1), no leave should be given for the enforcement of any order on the petition. His Honour Judge Hildesley, K.C., held that the war was not the cause of the position of the company, which appeared to have been insolvent almost from its inception. An order was made for the compulsory winding up of the company.

In a recent case at Newport (Mon.) County Court (*In re Forest Battery Service, Ltd.*), a petition was heard for the compulsory winding up of the company, by reason of its inability to pay its debts. The petitioners' case was that between January and June, 1940, they had supplied the company with wireless goods. In August they levied execution, but a notice of claim to the goods was served by a receiver for a debenture-holder, under debentures issued in 1935. The same receiver had previously been appointed in 1937, but had ceased to act in the same year. The second appointment was almost contemporaneous with the petitioners' judgment (in default of appearance), but leave to appoint the receiver—under the Courts (Emergency Powers) Act, 1939—was not obtained until October at the Cardiff County Court. It was submitted that the fact of the first appointment having been pre-war entitled the petitioners to an unconditional order. Notice of opposition had been given by the debenture-holder, who was nevertheless prepared to consent to the order, subject to his receiver having the leave of the court to exercise the power of sale. His Honour Judge Thomas considered that such leave was unnecessary. An unconditional order was accordingly made for the winding up of the company. Compare *In re Wood* [1940] W.N. 375.

To-day and Yesterday.

Legal Calendar.

10 March.—On the 10th March, 1830, Michael Toll, a pedlar, was tried at the Worcester Assizes for the murder of Anne Cook, the woman who lived with him. Her body had been found in a pit at Old Swinford and the evidence against Toll was purely circumstantial. The day of her disappearance they had been seen sitting together at the pit's edge and in the evening someone had heard a shriek of " Murder ! " from that direction. When it was apparent that she was missing Toll searched everywhere for her and after the body was found he displayed great grief. But blood was found on his yard-stick and it was evident that the woman had been heavily struck on the head so as to make two extensive lacerations. Toll was found guilty and sentenced to death.

11 March.—Sir James Stephen died on the 11th March, 1894, at Red House Park, Ipswich, three years after his retirement from the Bench.

12 March.—On the 12th March, 1817, Cashman, one of the rioters in the Spa Fields outbreak, was hanged before the shop of Mr. Beckwith, a gunsmith of Skinner Street, whose premises had been plundered. He replied to the howling of the mob, crying " Hurrah ! my boys, I'll die like a man ! " Shaking his head at Beckwith's house, he said : " I'll be with you there," meaning that he would haunt it after death. Just before the last moment he exclaimed : " Now you ——, give me three cheers when I trip." He then called out to the executioner : " Come, Jack, you ——, let go the jib boom." He was cheering when the drop fell.

13 March.—The Scottish legal sensation of 1854 was the mystery of St. Fergus, a remote Aberdeenshire village near which William M'Donald, a young farmer in good health and without worries, had been found shot dead in a field in circumstances which suggested suicide. Another complexion, however, was put on the case when it was discovered that his friend William Smith, the local doctor, who lived less than four minutes' walk from the spot and who was to have met him on the fatal evening, had insured his life for £2,000. Smith was also known to have bought gunpowder recently. He was indicted for murder and his trial opened in the High Court of Justiciary at Edinburgh on the 13th March. A juryman, however, was overcome by mental excitement and certified as unfit to continue his duties and the proceedings had to begin again. The final verdict was " Not proven."

14 March.—In 1822 Sir George Jerningham, whose family had owned Stafford Castle for more than a century, got a shock. The place was open to visitors during certain hours, and one day a person calling himself The Hon. James Stamp Sutton Cooke took advantage of this to gain possession of it, on behalf, he said, of his brother whom he called Lord Stafford. He proceeded to appoint gamekeepers, to claim rent from the tenants and to grant leases. He also felled about eighty trees and sold them to timber merchants. On the 14th March, 1823, there was tried at Stafford an action by Sir George Jerningham against one of the purchasers. The judge strongly reprobated the proceedings taken by the pretender in his system of violence and depredation and only expressed a doubt whether the defendant, who lent himself to it, was not guilty of felony. There was a verdict for damages.

15 March.—The rebellion of the American colonies and the War of Independence raised some new problems of law and policy. In 1777 Ebeneezer Platt, under the authority of the Provincial Congress of Georgia, was active against England, running contraband from the French and Dutch islands, carrying on correspondence with the King's enemies and once capturing a cargo of powder and arms. When he was caught he was sent to England to answer a charge of treason and was committed to Newgate, but after about fifteen months a warrant for his discharge was sent to the prison on the 15th March, 1778.

16 March.—In a letter dated the 16th March, 1808, the future Lord Campbell gave some interesting particulars of the Home Circuit which he had joined the previous year : " The first day of the assizes at any place we travel down, some arriving before dinner and the others in the evening. A few ride on horseback or drive gigs but the far greater number go in post-chaises. We must all live in lodgings, it being forbidden to sleep at the inns on account of the attorneys being there but at one inn in each town we all mess. The first night there is a general supper to which every barrister at the assizes must contribute. We dine together next day. . . . We sit down to table about five and rise at seven. The men of business then retire to their briefs and their consultations."

The Week's Personality.

The judicial career of Mr. Justice Stephen came to rather a sad end, for twelve years after his appointment to the Bench his mind began to fail to such a degree that the change was noticed. On the advice of his doctor he resigned and three years later he died. He had gone to the Bar against the wishes of his father, who destined him for a clerical career. Though conscious of a certain sluggishness in his nature, he worked steadily, without, however, reconciling himself to drudgery. He had no legal connections and work came slowly—indeed his practice always remained irregular—so that he needed to augment his earnings by journalism. The year after his call he succeeded in gaining a footing in the newly founded *Saturday Review*. Later he contributed to the *Cornhill Magazine* under Thackeray's editorship, and to the *Pall Mall Gazette*. He was an intimate friend both of Carlyle and Froude. In 1868 he took silk and eleven years later he became a judge. His massive common sense, somewhat deficient in subtlety, gave him too much of a dislike for technicalities, but in the field of the criminal law his knowledge gave him the highest authority, and for this and his unmistakable love of fair play he was deeply respected. He had a reputation for severity, but, as in the case of Mr. Justice Day, this sprang largely from his hatred of brutality and the sternness with which he felt obliged to deal with it.

Unreliable Test.

Recently at the Durham Assizes there fell from the lips of Charles, J., some wise and witty comments on drunkenness tests : " When I read through the report of the police surgeon, with his answers and conclusions, I said to myself, ' Charles, you are always drunk yourself—always, because you could never do better than the accused did in tests like those imposed.' " " Always keep in mind," he warned a jury, " that if you cannot stand on one leg properly you are drunk." The learned judge added that he was staggered to hear that one reason which convinced the doctor that the accused was drunk was the fact that he wrote his name with such perfection. The fundamental illogicality of most drunkenness tests lies in the fact that to say " All drunk men fail at this test " is not the same thing as saying " All men who fail at this test are drunk." Even if that were not so plain, their practical unreliability has often been demonstrated. Once, in the court of the late Sir Ernest Wild, when he was Recorder of London, a doctor stated that he had applied the Romberg test—standing still without swaying, with the feet together and the eyes shut. When the judge asked him to give a demonstration himself a distinct sway was noticeable. In another case an alleged drunken man, having successfully articulated " British Constitution " and " The Leith police dismisseth us," counter-attacked by requiring the doctors to repeat the first two lines of " Jabberwocky," and they failed.

Always Drunk.

Turning again to the words of Charles, J., in these half-bottle days, it is a very *reductio ad absurdum* for a judge to suggest that the logical conclusion of a line of thought is that he is drunk. But it was not always so. More particularly things were different in Scotland and Ireland. Lord Newton, an exceedingly eminent Scots judge, was a heavy drinker. Once a friend, with whom he was discussing the question of purchasing an estate from which he might take his title, said ! " Weel, my lord, there's the estate of Drunkie in the mercat ; buy it and then ye'll no need to tak' it amiss when folk say ye're drunk aye." Judge Ball, in Ireland, used to keep one of the inkpots on his desk filled with brandy so that he could now and then take a surreptitious sip through a straw kept handy among his pens. There is a story of another Irish judge who drank so freely at a Viceregal ball that he was none too steady on his legs. " Is it true," someone asked Chief Justice Doherty next day, " that he danced at the Castle ball ?" " Well," replied the Chief, " I certainly can say I saw him in a reel."

Obituary.

Mr. H. Hookway.

Mr. Henry Hookway, solicitor, of Bath, died recently. He was admitted a solicitor in 1896.

Mr. S. Saw.

Mr. Samuel Saw, solicitor, of Messrs. Saw & Sons, solicitors, of Bank Chambers, Trafalgar Road, Greenwich, S.E.10, died on Sunday, 23rd February, at the age of eighty-five. He was admitted a solicitor in 1878, and for several years was a member of the Council of The Law Society. At the time of his death he was the senior member of the Kent Law Society, of which he had been president.

Practice Notes.

Contract made after Emergency Powers Act.

RELIEF under the Courts (Emergency Powers) Act, 1939, s. 1, cannot be claimed where the debt or obligation arose by virtue of a contract made *after* the commencement of the Act (proviso to subs. (2)).

In *Smallman* v. *Embassy Cinema (Tottenham Court Road), Ltd.* (1941), 1 All E.R. 241, the plaintiff had made a *pre-war building agreement* with C & M, who were to erect a cinema; when the building was complete the plaintiff was to grant them a lease of the premises. They were entitled, under the agreement, to require the lease to be granted to their nominee. In September, 1939, the contemplated lease—a *post-war lease*—was granted to the defendant company, which was then incorporated. Until that lease was executed, the company was under no liability for rent; the company's debt or obligation for rent arose, therefore, not under the building agreement, but under the lease. The company was under no pre-war obligation, said the Court of Appeal, and was therefore not entitled—as the law at present stands—to relief under the Act.

It is understood that it is proposed to amend the Act in a Bill to be introduced whereby, *inter alia*, such relief would be available whether the contract was made before the commencement of the Act or not.

Conditional Leave to Defend: Extension of Time.

BY Ord. LXIV, r. 7, a court may enlarge any time fixed by the rules, although the application is not made until after the time allowed has expired.

In *Manley Estates, Ltd.* v. *Benedek* (1941), 1 All E.R. 248, moneylenders had obtained judgment in default of appearance. The debtor later applied to Master Ball to set aside the judgment; it was ordered that the debtor might defend the action if he entered appearance within seven days and paid £50 into court and the costs of bankruptcy proceedings that had been taken. B appealed to Wrottesley, J., against that part only of the order requiring him to pay the costs of the bankruptcy proceedings, it was ordered that those costs be reserved and that the time for paying the sum of £50 into court be extended by seven days. *After the expiry* of that period B applied to Master Moseley to extend the time. The application was dismissed on the ground that there was no jurisdiction. Stable, J., dismissed the appeal on the ground that Master Ball had given leave to defend specifically on the condition that the payment should be made within seven days.

The Court of Appeal held that there was jurisdiction to extend time under these circumstances. The action was still in existence. The cases cited where an extension was refused were cases in which the action was at an end (*Script Photography Co.* v. *Gregg* (1890), 59 L.J. Ch. 406; *Whistler* v. *Hancock* (1878), 3 Q.B.D. 83).

Solicitor's Charging Order for Costs.

BY a decree *nisi* the husband petitioner was ordered to pay the wife's taxed costs. The wife had cross-petitioned and there was an intervener. The intervener was dismissed from the suit, with costs against the wife. The sum of £550 was in court; the wife's taxed costs were £826. To the wife's solicitor the sum in court was paid; an order was made for the payment to him of the balance. The intervener's taxed costs were £302.

The husband applied to the Court of Appeal that he be allowed to set off the intervener's costs against the costs which he had been ordered to pay to his wife; the court refused the order. He then took an assignment of the intervener's claim for costs.

The wife's solicitor thereupon issued a summons for a charging order to the extent of £276 upon the costs ordered to be paid by the husband to the wife. The registrar and the judge held that there could be no charging order on costs and that there was no fund. The Court of Appeal decided that irrespective of the Solicitors Act, 1932, s. 69, a claim can be made at common law for a charging order on a sum ordered to be paid for costs under the inherent jurisdiction of the Court (*Campbell* v. *Campbell and Lewis* (1941), 1 All E.R. 274). The granting of the order was in the discretion of the court; there was no reason here for refusing to exercise that discretion.

Before the registrar, Henn Collins, J., and the Court of Appeal, it had been argued that the wife's costs were not "property recovered or preserved" within s. 69. This point the Court of Appeal did not decide, saying that this view appeared inconsistent with *Dallow* v. *Garrold, ex parte Adams* (1884), 14 Q.B.D. 543.

Notes of Cases.

JUDICIAL COMMITTEE OF THE PRIVY COUNCIL.

Maharani Hemanta Kumari Debi and Others *v.* Gauri Shankar Tewari and Others.

Lord Atkin, Lord Thankerton, Sir George Rankin.
4th December, 1940.

Dedication (India)—Bathing place on sacred river—Rights of ghatias——Use of land as bathing ghat does not imply cessation of ownership.

Appeal from a decision of a Full Bench of the High Court, Allahabad (Sulaiman, C.J., Bajpai and Ganga Nath, JJ), varying a decree of the Additional Subordinate Judge of Benares.

The plaintiff, Maharani Hemanta Kumari Debi, claimed to be the owner of a bathing ghat on the bank of the Ganges in Benares. The defendants belonged to a class of Brahmins known as ghatias, who, like their predecessors, had been allowed by the owners of the ghat to sit on different portions of it in order to gain a livelihood by receiving alms and gifts from pilgrim bathers. The plaintiff complained that the defendants were abusing the permission granted to them, by altering the condition of the steps, putting down platforms of earth and wood, erecting canopies, and blocking up the free space to the detriment of the utility, cleanliness and beauty of the ghat. She claimed a declaration that she was the owner of the ghat, and that the defendants had no right to sit on any portion of it; an order of ejectment of the defendants; an order for removal of the various obstructions put up by them; and an injunction restraining them from using any portion of the ghat as ghatias. The main defence was a denial of the plaintiff's proprietary right, and set up that the ghatias were a community whose business and duty it was to assist bathers; that a ghat necessarily involved a right on the part of some members of this community to occupy portions of it by the use of seats or platforms of the kind known as chaukis or takhts; that that right was a form of property heritable and transferable by the Hindu law; that the defendants and their ancestors had been in occupation of definite sites on the ghat for hundreds of years; and that they had been guilty of no impropriety. The trial judge found for the plaintiff. On appeal, a Divisional Bench referred the matter to a Full Bench, which maintained the decree of the trial judge in so far as it directed removal of railings, planks, canopies and other articles of obstruction, but discharged the order of ejectment, the injunction and the declaration that the plaintiff was owner of the ghat. The plaintiff now appealed against those variations of the decree of the trial judge. (*Cur. adv. vult.*)

SIR GEORGE RANKIN, delivering the judgment of the Board, said that the reasons given by the judges fully justified their order for removal of the obstructions, and their rejection of the defendants' claim to have acquired any rights in the ghat whether by custom, prescription or grant. The defendants had not appealed from the High Court's decree. The Full Bench had set aside the trial judge's decree of ejectment and the injunction on the ground that such relief would interfere with the right of "the bathing public" to take to the ghat persons who might help in the proper performance of "spiritual ablutions" and ceremonies. Assuming, without deciding, that any bather might bring with him his own priest or friend to assist in ceremonial ablutions, that was no valid reason for refusing the plaintiff ejectment with a properly framed injunction. If the plaintiff's ownership entitled her to relief, then, on its appearing that the defendants had no such rights as they claimed, she was as well entitled to an order that the defendants should remove themselves as to an order for removal of their canopies. They were not persons who came with bathers to the ghat, but persons who cumbered the ghat in order to intercept the bathers. As the Full Bench had held that the plaintiff was a mere manager or *mutawalli* of the ghat, it was right to consider whether the trial judge's declaration of the plaintiff's ownership was well founded. If dedicated to the purpose of a ghat land or other property would be dedicated to an object both religious and of public utility notwithstanding that it was not dedicated to any particular deity. It could not from that consideration at once be concluded that in any particular case there had been a dedication in the full sense of the Hindu law, which involved the complete cessation of ownership on the part of the founder, and the vesting of the property in the religious institution or object. In the absence of a formal and express endowment evidenced by deed or declaration, the character of the dedication could only be determined on the basis of the history of the institution. There was a broad distinction between saying that the plaintiff's ownership was not absolute because qualified by the public's right of user for purposes of bathing, and saying that the plaintiff was not the owner at all, but a mere *mutawalli* in whom nothing vested because her predecessor had dedicated the ghat in the full sense of divesting himself of all interest in it. It was not essential at Hindu law to a valid dedication that the legal title should pass from the owner, and the character of the use to be made of the bank did not require it. The appeal should be allowed.

COUNSEL: *Rewcastle*, K.C., and *C. Sydney Smith*; *J. M. Parikh* and *P. V. Subba Row*.

SOLICITORS: *Lambert & White*; *Harold Shephard*.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

COURT OF APPEAL.

Williams *v.* Boag.

MacKinnon, Goddard and du Parcq, L.JJ. 20th September, 1940.

Procedure—Payment in with admission of liability—Amendment of defence by withdrawing admission—Unanswerable defence—Judge to be told of payment in—Defendant entitled to payment out—R.S.C., Ord. XXII, rr. 2, 6.

Appeal from an order made by Singleton, J., in chambers.

The plaintiff brought an action to recover from the defendant, as representing himself and other underwriters at Lloyd's, a sum of money alleged to be due under a marine insurance policy on a steam drifter. The policy covered risks to the vessel while laid up at West Mersea. The defendant admitted liability and paid £100 into court. By a mistake which was unknown at that time to the plaintiff and the defendant, no note was taken of the fact that the damage to the drifter for which the plaintiff was claiming had occurred at Brightlingsea, so that the risk never attached and the defendant could not be liable. The true facts having emerged, the defendant applied for leave to amend his defence by withdrawing from it the admission of liability. Singleton, J., granted the application, the fact of the payment into court with an admission of liability not being mentioned to him. A few days before the date fixed for the trial, the plaintiff made an application to the judge for payment out to him of the £100. The defendant now appealed against the order granting that application. By R.S.C., Order XXII, r. 6, no statement of the fact that money has been paid into court under the order at the trial of any action to be made to the judge until all questions of liability and amount of debt or damages have been decided.

MacKinnon, L.J., said that he did not agree with the suggestion that the difficulty arose in the constitution of the rules of Ord. XXII that, if a man had paid money into court with an admission of liability, and, subsequently finding that he had made a mistake, obtained leave to amend his defence, it was then impossible for him to approach the court with an application to withdraw his notice of admission of liability and safeguard his right ultimately to have the money which had been paid in repaid to him. The Court of Appeal had indicated one method of doing that in *Fraser & Hawes, Ltd.* v. *Burns*, 49 Ll. L. Rep. 216, saying that it was simply a matter of giving leave to amend the defence, and that the money paid into court should then remain there until the trial. If, however, it were admitted that the amendment of the defence raised an insuperable obstacle to the plaintiff's claim, the court had power to order payment out of the money to the defendant, notwithstanding that r. 3 did not, in terms, contemplate such a possibility. The appeal would be allowed, and the action dismissed. The £100 would be repaid by the plaintiff to the defendant.

Goddard, L.J., agreeing, said that it was unfortunate that the judge had not been informed of the payment into court. There was no difficulty about informing him in such a case. When an amendment of the pleadings was sought, the fact that money had been paid into court was a matter of which the judge should know. There was no prohibition in Ord. XXII, r. 6, against telling him then. It should be made clear that r. 6 did not prevent a judge on an interlocutory application from being told of a payment in, where it was desirable that he should know of it.

du Parcq, L.J., agreed.

Counsel: *Devlin; Cyril Miller.*

Solicitors: *Ballantyne, Clifford & Co.; Kenneth Brown, Baker, Baker.*

[Reported by R. C. Calburn, Esq., Barrister-at-Law.]

APPEALS FROM COUNTY COURT.

Davis *v.* Cambrian Wagon Works, Ltd.

Scott, Clauson and Goddard, L.JJ. 31st January, 1941.

Workmen's compensation—Redemption of weekly payments by lump sum—"Continued for not less than six months"—No such payment made for six months—Workmen's Compensation Act, 1925 (15 & 16 Geo. 5, c. 84), s. 13—Workmen's Compensation (Supplementary Allowances) Act, 1940 (3 & 4 Geo. 6, c. 47), s. 1 (1) (a).

Appeal by the employers from an award dated 1st November, 1940, by His Honour Judge Wethered made at Bristol County Court under the Workmen's Compensation Acts, 1925 to 1940.

The accident out of which the dispute arose had resulted in injuries necessitating amputation of both legs above the knee. The workman received compensation thereafter on the basis of total incapacity at the rate of £1 8s. 5d. a week. On 7th August, 1940, the employers applied under s. 13 of the Workmen's Compensation Act, 1925, to be allowed to redeem their liability for compensation by payment of a lump sum. On 10th September, 1940, the workman filed an application for review asking for an increase of compensation to 30s. on the ground that but for his injury he would have been earning an increase in wages of more than 20 per cent., and a further increase of 5s. a week under the Workmen's Compensation (Supplementary Allowances) Act, 1940, as from 19th August, 1940, when that Act came into force. On 14th October, 1940, the employers submitted to an award in the terms of the workman's application and became liable to pay the workman 35s. a week. The question was agreed to be whether the employers were entitled to redeem the standard compensation of 30s. a week without redeeming also the additional payment under the 1940 Act. Section 13 of the Workmen's Compensation Act, 1925, provides that where any weekly payment has been continued for not less than six months, the liability may, on application, be redeemed. . . . Section 1 (1) of the Workmen's Compensation (Supplementary Allowances) Act, 1940, provides that where any workman is at any time while this Act is in force entitled to a weekly payment by way of compensation under the Workmen's Compensation Act, 1925 . . . he shall . . . be entitled, in respect of each week after the commencement of this Act in respect of which he is entitled to the weekly payment, to (*a*) a supplementary allowance at a rate not exceeding 5s. a week. The learned county court judge held that the employers were not entitled to redeem the payment of 30s. a week without redeeming also the supplementary allowance of 5s. a week and therefore dismissed the application to redeem, as it was only directed to redemption of the weekly payment of 30s. He held, however, that they would otherwise have been entitled to redeem under s. 13 the payment of 30s., although in fact that was not the weekly payment that had been made, as the words "any payment" in s. 13 did not refer to a fixed weekly payment actually made, but any sum paid in discharge of liability under the Act for not less than six months.

Scott, L.J., said that the primary object of s. 13 was to enable a weekly payment of a known amount to be converted into a capital payment equal to three-quarters of the capital value of the weekly payment on a certain actuarial basis relating to interest tables. The essence of the section in its plain language was that the weekly payments should be of a known amount. The matter had, however, been concluded by *Calico Printers' Association* v. *Higham* [1912] 1 K.B. 93, in which the Master of the Rolls, at p. 96, said that the arbitrator could not award less or more than 75 per cent. of the actuarial value. The Master of the Rolls said that if it was not permanent incapacity the arbitrator had to fix the lump sum in his discretion, having regard to the evidence before him. He added that the arbitrator must start with the assumption that the existing weekly payment was proper; but he must go further, and ascertain as best he could whether that payment was likely to be proper during the rest of the man's life. That, said Lord Justice Scott, was only for the purpose of ascertaining how far the payment was permanent; in other words, stabilised, so as to make conversion from weekly payment into capital payment a fair valuation. The only question to be decided was whether the judge was right in refusing to apply the provision in s. 13 that the payment which, as a matter of arithmetic, had to be converted into a capital payment, must be one which had continued for not less than six months. He took the view that he was not bound to apply it here. As he took a wrong view of the case on that point and his decision on the other part of the case did not arise for consideration, the appeal must be dismissed, with costs.

Clauson, L.J., said that the parties had agreed to assume that the £1 10s. was the weekly allowance which ought to be redeemed, and had induced the county court judge to proceed on that footing. This court was now asked to deal with the case on the same footing, and to decide whether or not his view on the redemption of supplementary allowances was right. The court could not do that unless there was jurisdiction to redeem the normal payment of £1 10s. If the £1 8s. 5d. had not been altered to £1 10s. no difficulty would have arisen. The Act said plainly that an employer was not entitled to redeem a weekly payment unless that weekly payment had been for six months, but even if this was not plain it would be impossible for the court to decide otherwise, having regard to the judgments of Sir Herbert Cozens-Hardy and Fletcher Moulton, L.J. in *Calico Printers' Association* v. *Higham* [1912] 1 K.B. 93. Lord Finlay in *Clawley* v. *Carlton Main Colliery Co., Ltd.* [1918] A.C. 744, seemed to take the same view. The county court judge should have refused to proceed with the case because the employers could not redeem the 30s., so that the question whether they could redeem the 30s. without redeeming the 5s. did not arise.

Goddard, L.J., agreed.

Counsel: *Gilbert Paull*, K.C., and *R. M. H. Everett*; *F. A. Sellars*, K.C., and *E. L. Benson.*

Solicitors: *James Turner & Son and Whitehouse*, for *Wansbroughs, Robinson, Tayler & Taylor*; *Burn & Berridge.*

[Reported by Maurice Share, Esq., Barrister-at-Law.]

HIGH COURT—CHANCERY DIVISION.

In re Webb; Barclays Bank, Ltd. *v.* Webb.

Farwell, J. 18th February, 1941.

Insurance—Policy taken out by father—Expressed to be "for benefit of and on behalf of" infant son—On attaining twenty-one son to be "solely interested" in policy—Whether policy moneys form part of father's estate.

Adjourned summons.

In 1934 the testator took out a policy of insurance on the life of his infant son for the sum of £6,042. The policy contained a recital that the insurance was effected by the testator "for and on behalf of" the son. The policy provided for the payment of the premiums and laid down the circumstances in which the policy moneys were to be payable. The policy contained certain options which might be exercised by the testator immediately before the son attained twenty-one "on his behalf." In the event of the son's death under twenty-one the premiums which

had been paid were to be repaid to the testator. The policy then provided that on the son's twenty-first birthday all rights and powers of the testator should cease in relation to the policy and the son would become solely interested therein and entitled to deal therewith. In 1936 the testator took out a second and similar policy on the life of his infant daughter. The testator died in 1939 and this summons was taken out by the plaintiff bank, as his executor, asking whether these two policies formed part of his estate or were held by him at his death on trust for the son and daughter respectively.

FARWELL, J., said that the whole matter entirely depended upon the true construction of the policies. Unless there was in the policies something which established reasonably clearly that the testator was in fact constituting himself a trustee for the infants of the insurance moneys, his personal representatives were entitled to the moneys. The mere fact that a policy was expressed to be taken out "for and on behalf" of an infant would not alone be sufficient to constitute such a trusteeship. The policies were in their terms quite different from the policy which he himself had had to consider in *In re Sinclair's Life Policy* [1938] Ch. 799, or which Romer, J., as he then was, had had to consider in *In re Englebach* [1924] 2 Ch. 348. In the present case it seemed from the form of the policy that the intention was to create a trust in favour of the children. Throughout the policies the testator was expressed to exercise the powers conferred on him "on behalf of" the children. Further, on the son or daughter attaining twenty-one, any interest of the testator in the policy was to cease. Reading the policies as a whole, there was sufficient evidence to establish a trust in favour of the infants, and the policies were now held by the bank upon trust for them.

COUNSEL: *Winterbotham; Stone; Jopling.*

SOLICITORS: *Field, Roscoe & Co.*

[Reported by Miss B. A. BICKNELL, Barrister-at-Law.]

In re Pollock; Pollock *v.* Pollock.

Farwell, J. 26th February, 1941.

Public policy—Husband kills wife and then himself—No evidence of state of mind of husband—Killing assumed to be felonious—Husband cannot benefit from wife's estate.

Adjourned summons.

The testatrix by her will made in 1924 had given the whole of her property to her husband. She and her husband lived happily together, but the war much depressed the husband. On the 11th June, 1940, they breakfasted together; the husband then went to his room, fetched his revolver and first shot and killed his wife and then killed himself. There was no one in the room when the shooting took place. At the coroner's inquest the jury found that the wife died as the result of a revolver shot fired by the husband and that he then committed suicide, his mind being unhinged at the time. This summons was taken out by the wife's personal representative to have it determined whether her estate passed under her will to her husband or whether she had died intestate.

FARWELL, J., said that the verdict of the coroner's jury was not admissible evidence of what actually had happened (*Bird* v. *Keep* [1918] 2 K.B. 692). The admissible evidence before him did, however, establish that the wife died on the 11th June, 1940, as the result of a shot fired by her husband and that he subsequently committed suicide. There was no evidence of the state of mind of the husband at the time of the shooting. It was well settled that a murderer was not entitled to participate in the estate of the person he had murdered, whether he claimed under a will or on an intestacy. There was an exception to this rule. If the fatal act was done when the murderer was insane, he was entitled to be acquitted of murder and he was not prevented from benefiting from the estate of the deceased person. In the absence of any evidence of the condition of mind of the murderer, the court must act on the assumption that the killing was felonious. This was an assumption only, as there was no evidence on which the court could come to a definite conclusion. If it were wrong, the personal representatives might find themselves in a difficult position. The risk, however, was infinitesimal. It was inconceivable that any person could now prove what was the state of the husband's mind. In these circumstances it was the duty of the wife's personal representatives to act on the assumption that the husband was not entitled to benefit from the estate of the wife, and he declared that they should distribute the estate on the footing that she had died intestate, the husband's estate not being entitled to benefit by reason of the intestacy.

COUNSEL: *Sir Lancelot Elphinstone; Romer*, K.C., and *Hewins; Cross.*

SOLICITORS: *E. S. P. Haynes; Horne & Birkett.*

[Reported by Miss B. A. BICKNELL, Barrister-at-Law.]

HIGH COURT—KING'S BENCH DIVISION.

Weston *v.* London County Council.

Wrottesley, J. 11th March, 1941.

Dangerous machinery—Pupil at technical institute injured by unfenced machine—Institute not a "factory"—Degree of care required from instructors—Factories Act, 1937, *s.* 151 (1) (x), (9).

Action for damages for negligence and breach of statutory duty.

The plaintiff was a pupil at a technical institute belonging to the London County Council, and received instruction there in the work of a wood-cutting machinist. He was thirty-one years of age, had long experience of a wood-working machinery shop, and paid for his lessons. While he was working at a vertical spindle machine for cutting moulded edges on wood, his hand came into contact with the cutter of the machine, which was not fenced, and he received injuries resulting in the loss of a little finger. Wrottesley, J., found as a fact that the accident was caused by the plaintiff pulling a piece of wood towards the cutter contrary to the instructions which had been given to him to push it. The plaintiff now sued the council, contending that the institute was a factory within the meaning of the Factories Act, 1937, and that the defendants were guilty of a breach of statutory duty in failing to fence the machine, and of negligence in failing to supervise or instruct the plaintiff properly. By s. 151 (1) of the Act of 1937, "... the expression 'factory' means any premises in which, or within the ... precincts of which, persons are employed in manual labour in any process for or incidental to any of the following purposes—namely:—(*a*) the making of any article ... or (*b*) the altering, repairing, ornamenting, finishing ... of any article; or (*c*) the adapting for sale of any article; being premises in which, or within ... the precincts of which, the work is carried on by way of trade or for purposes of gain and to or over which the employer of the persons employed therein has the right of access or control." The subsection also includes in the expression "factory" certain special cases, including "(x) any premises in which mechanical power is used in connection with the making ... of articles of metal or wood incidentally to any business carried on by way of trade or for purposes of gain." By s. 151 (9) "Any premises ... in the occupation of ... any ... public authority shall not be deemed not to be a factory ... by reason only that the work carried on thereat is not carried on by way of trade or for purposes of gain."

WROTTESLEY, J., said that it could not be suggested that the technical institute fell within the general definition of "factory" in s. 151 (1). It was true that manual labour might be said to be performed there, but there were no persons "employed in manual labour in any process" other than the instructors; and the latter were not engaged "in any process for or incidental to" any of the purposes set out in s. 151 (1). The word "employed" in the definition did not mean merely "busy," "occupied," or "engaged," and, further, the plaintiff was not so occupied or engaged for the purposes of trade, but for those of instruction. Pupils were certainly not employed either by way of trade or for purposes of gain. Section 151 (1), however, went on to include certain special kinds of premises in the word "factory." The only special case in any way approaching a technical institute was (x). There being, however, neither trade nor purposes of gain involved, that special case could not be said to cover a technical institute. It was strongly argued for the plaintiff that a technical institute was covered by s. 151 (9). The object of that subsection was to cover all the activities by servants of public or local authorities which would not otherwise be covered by the Act. It was to be observed that it was of a purely negative kind. A school or college was not a factory, and scholars or pupils were not employed by those who owned, or taught in, the school or college. Nothing would have occasioned more surprise to Parliament when it was discussing the proposed factory legislation in 1937 than to hear that it was legislating for schools, colleges, or technical institutions. It was not that there was no provision in the Act of 1937 which was clearly applicable to any place where machines were worked on, but rather that there were many provisions in the Act which were clearly inapplicable to schools and colleges. Parliament might have used language which, in its literal meaning, included technical institutes, but the use of the words "employer," "employed," and "employment" led to a different conclusion. The question remained whether, apart from the Act, the facts disclosed any neglect by the defendant council towards the plaintiff. The degree of care which a teacher owed to his pupil must depend on the character of the pupil. It was not careless of the instructor in the circumstances to leave the plaintiff, with his experience, to adjust the machine while he himself went to look after another pupil, especially as the correct way in which to work the machine had been explained to the plaintiff. He (his lordship) was not prepared to say that those engaged in teaching the use of an admittedly dangerous machine had to obey the code laid down by the Factories Act concerning guards, because the result of so doing might be very seriously to hamper such instruction, if not to stop it altogether. There must be judgment for the defendants, with costs.

COUNSEL: *Weitzman; Monier-Williams.*

SOLICITORS: *Breeze, Benton & Co.; J. R. Howard Roberts.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Books Received.

Income Tax for the Clergy. By A. L. BOYDON. With a Preface by The Rt. Rev. THE BISHOP OF ST. ALBANS. 1941. Crown 8vo. pp. xii and (including Index) 210. London: Eyre & Spottiswoode (Publishers), Ltd. Price 6s. net.

Police Law. By C. C. H. MORIARTY. War Edition (Seventh). 1941. Crown 8vo. pp. xx and (including Index) 573. London: Butterworth & Co. (Publishers), Ltd. Price 6s. net.

Societies.

Sheffield District Incorporated Law Society.

The committee of the Sheffield District Incorporated Law Society presented the sixty-sixth annual report of the proceedings of the Society at the annual general meeting held at the Law Society's Hall, Campo Lane, Sheffield, on Thursday, 6th March.

The following members died during 1940: Colonel G. E. Branson, and Messrs. J. Halmshaw (Barnsley), J. B. Kesteven and C. Padley. Colonel Branson was President of the Society in 1914, and Mr. Padley in 1939.

The Poor Man's Lawyer service had been maintained through a year of difficulties, but unless more members of the Society were prepared to undertake a share of the work, an undue burden would fall upon the few solicitors remaining on the rota and the work might ultimately have to be discontinued until after the war. Mr. L. S. Hiller, the secretary of the committee, would be pleased to hear from any members willing to assist.

With regard to Poor Persons Procedure, 178 applications were received during the year and 108 were pending at the end of 1939, making 286 altogether. Of these 103 were granted, 42 refused, 4 transferred to other committees, 29 were withdrawn and otherwise dealt with, and 108 were waiting at the end of the year.

The number of applications received during the year was about 50 less than in the previous year and, whilst the work of the committee has proceeded satisfactorily, there was still some leeway to make up in dealing with arrears of cases.

The committee wished to place on record their great regret on the retirement of Mr. A. P. Aizlewood from the committee and the chairmanship, owing to his removal from the district. Mr. Aizlewood had been chairman since the committee was formed, and his experience and sound judgment had been of invaluable assistance in dealing with the applications. Mr. S. H. Clay had been elected chairman in Mr. Aizlewood's place.

Prizes to University students for the sessions 1939–1940 were awarded as follows:—

The Senior's prize, value £3 3s., was awarded to Mr. G. G. Lee.

The Junior's prize, value £2 2s., was divided between Messrs. W. M. Field and A. A. Palmer.

Solicitors' Benevolent Association.

The monthly meeting of the directors was held at 60, Carey Street, Chancery Lane, W.C.2, on Wednesday, the 5th March, 1941. Mr. Gerald Addison was in the chair and the following directors were present: Mr. R. Bullin, T.D., J.P. (Portsmouth), Vice-Chairman, Mr. Miles Beevor, Mr. Ernest E. Bird, Mr. P. D. Botterell, C.B.E., Mr. A. J. Cash (Derby), Sir Edmund Cook, C.B.E., LL.D., Mr. T. G. Cowan, Mr. T. S. Curtis, Mr. P. Stormonth Darling, and Mr. A. F. King-Stephens. Grants amounting to £913 were made from the general funds and three pensions amounting to £156 were awarded from the Swann Pension Fund. Eleven new members were admitted.

Parliamentary News.

Progress of Bills.

Royal Assent.

The following Bills received the Royal Assent on the 6th March:—
Diplomatic Privileges (Extension).
House of Commons Disqualification (Temporary Provisions).

House of Lords.

Air-Raid Precautions (Postponement of Financial Investigation) Bill [H.C.].
Read Second Time. [11th March.

Land Drainage (Scotland) Bill [H.C.].
Read Second Time. [11th March.

Public and Other Schools (War Conditions) Bill [H.L.].
Read Second Time. [11th March.

Solicitors Bill [H.L.].
Read First Time. [11th March.

War Damage Bill [H.C.].
In Committee. [11th March.

War Legislation.

(*Supplementary List, in alphabetical order, to those published week by week in* The Solicitors' Journal *from the 16th September, 1939, to the 8th March, 1941.*)

Statutory Rules and Orders, 1940–41.

No. 279. **Aliens** (Former British Subjects) Order, February 28, 1941.
No. 280. Aliens (Protected Areas) (No. 3). February 28, 1941.
No. 260. **Allied Forces** (Free French Air Force) Order in Council, February 28, 1941.
E.P. 233. **Blocked Accounts** (Authorised Investments) Order, February 27, 1941.
No. 157. **Children and Young Persons** (Contributions by Local Authorities) Regulations, February 28, 1941.
E.P. 270. **Compound and Mixed Feeding Stuffs** (Control) (No. 2) Order, 1940. Amendment Order, February 28, 1941.
E.P. 272. **Coffee** (Maximum Retail Prices) Order, March 1, 1941.
No. 250. **Control of Aluminium** (No. 5) Order, 1940. Direction No. 1, February 26, 1941.
E.P. 227. Control of Native Cattle Hides (No. 3) Order, February 23, 1941.
E.P. 275. Control of Sulphuric Acid (No. 2) Order, 1940. Direction No. 2, March 4, 1941.
E.P. 261. **Defence** (Evacuated Areas) Regulations, 1940. Amendment Order in Council, February 28, 1941.
E.P. 256. Defence (General) Regulations, 1939. Order in Council, February 28, 1941, amending Regulation 42B and adding Regulation 42BA.
E.P. 255. Defence (General) Regulations, 1939. Order in Council, February 28, 1941, adding Regulations 45D and 60D and amending the Third Schedule.
E.P. 257. Defence (General) Regulations, 1939. Order in Council, February 28, 1941, amending Regulation 58A.
No. 241. **Export of Goods** (Control) (No. 7) Order, February 27, 1941.
E.P. 276. **Feeding Stuffs** (Rationing) Order, 1941. Directions, March 1, 1941.
E.P. 269. Feeding Stuffs (Rationing) Order, 1941. General Licence and Directions, February 28, 1941.
E.P. 242. **Flour** (Prices) Order, 1940. Amendment Order, February 26, 1941.
E.P. 229. **Food** (Restrictions on Meals in Establishments) Order, February 22, 1941.
E.P. 239. **Industrial Registration** (No. 1) Order, February 24, 1941.
No. 263. **Ipswich Dock Commission** (Extension of Term of Office) Order in Council, February 28, 1941.
E.P. 264. **Limitation of Supplies** (Woven Textiles) Order, 1940. Licence, February 28, 1941.
265/S.2. **Local Government Superannuation** (Actuarial Valuations) Amendment (Scotland) Regulations, February 27, 1941.
No. 262. **Methodist Church** (Temporary Provisions) Order in Council, February 28, 1941.
E.P.251/L.5. **Metropolitan Police Courts** Order, February 24, 1941.
E.P. 259. **Milk Powder** (Prescribed Prices) Order, February 26, 1941.
No. 252. **National Debt**, Post Office Register Regulations, February 24, 1941.
No. 253. National Debt, Post Office Register (Trustee Savings Banks) Regulations, February 24, 1941.
No. 2221. **National Health Insurance** (Approved Societies) Amendment Regulations, December 18, 1940.
No. 258. **National Service** (Armed Forces), Order in Council, January 29, 1941, approving Proclamation directing that certain British subjects shall become liable to be called up for Service in the Armed Forces of the Crown.
E.P. 277. **Potatoes** (1940 Crop) (Control) Order, 1940. Amendment Order, March 3, 1941.
No. 240. **Prevention of Fraud** (Investments) Act Licensing (Amendment) Regulations, February 25, 1941.
E.P. 228. **Rabbits** (Maximum Prices) (No. 2) Order, February 21, 1941.
E.P. 232. **Road Haulage Undertakings** (Accounts and Returns) Order, February 21, 1941.
E.P. 278. **Sale of Food** (Public Air Raid Shelters) Order, 1940. Directions, March 3, 1941.
No. 283. **Savings Banks** (Limits of Annual Deposit) (Amendment) Order, March 3, 1941.
E.P. 281. **Segregation of Aluminium Scrap and Aluminium Alloy Scrap** (Admiralty) Order, March 3, 1941.
E.P. 267. **Ships' Emergency Rations** Order, March 1, 1941.
E.P. 273. **Shortage of Drugs** Order, February 24, 1941.
E.P. 274. **Sulphuric Acid** (Charges) (No. 1), March 4, 1941.
No. 244. **Trading with the Enemy** (Shipping Claims) Order, February 25, 1941.
No. 217. Trading with the Enemy (Specified Persons) (Amendment) (No. 3) Order, February 22, 1941.
E.P. 243. **Temporary Constables** (Emergency) Rules, February 20, 1941.
No. 284. **Unemployment Assistance** (Prevention and Relief of Distress) (Refugees) Regulations, February 21, 1941.
No. 245. **War Risks** (Commodity Insurance) (No. 1) Order, February 27, 1941.
No. 234. **Wild Birds Protection** (Administrative County of the Isle of Wight) Amending Order, February 13, 1941.
No. 235. Wild Birds Protection (East Riding of Yorkshire) Amending Order, February 18, 1941.
E.P. 236. **Winter Field Beans** Order, 1940. General Licence, February 19, 1941.

[E.P. indicates that the Order is made under Emergency Powers.]

Draft Statutory Rules and Orders, 1941.

Motor Vehicles (Construction and Use) Regulations, 1941.

Stationery Office.

Statutory Rules and Orders, List of, February 1 to 28, 1941.

Treasury.

Defence Regulations (being Regulations made under the Emergency Powers (Defence) Acts, 1939 and 1940, printed as amended up to and including January 15, 1941) to which is prefaced a Table of Acts of Parliament amended, suspended or applied by Defence Regulations and Orders made thereunder, by Orders in Council made under the Chartered and Other Bodies (Temporary Provisions) Act, 1939, and by orders made under the Import, Export and Customs Powers (Defence) Act, 1939, 7th Edition, January 15, 1941.

Statutory Rules and Orders, 1920.

No. 1484. **Police Regulations,** August 20, 1920, as amended by 1922, 250; 1923, 327; 1924, 291; 1925, 319 and 613; 1926, 1581; 1930, 614; 1931, 842; 1932, 762 and 888; 1933, 326; 1934, 660; 1935, 590; 1939, 780; and 1940, 1704.

Statutory Rules and Orders, 1933.

No. 722. **Police** (Women) Regulations, July 24, 1933, as amended up to and including S.R. & O., 1940, 1705.

Copies of the above S.R. & O.'s, etc., can be obtained through The Solicitors' Law Stationery Society, Ltd., 22, Chancery Lane, London, W.C.2, and Branches.

Legal Notes and News.

Honours and Appointments.

The King has approved of the appointment of Mr. Howard Archibald Tucker as Recorder of Stoke-on-Trent in place of the late Sir Reginald Coventry, K.C. Mr. Tucker was called to the Bar by the Middle Temple in 1922.

It is announced by the Colonial Office that the King has been pleased to approve the appointment of Mr. Maurice Cherry Greene, lately Puisne Judge, Palestine, to be Chief Justice in Gibraltar, in succession to Sir Kenneth James Beatty, who has retired.

The Lord Chancellor has appointed Mr. A. M. Wilson, Registrar of the Salisbury and Shaftesbury County Courts, to be the Registrar of Andover County Court in addition, and Mr. J. N. St. G. Curwen, Registrar of the Workington and Cockermouth County Court, to be Registrar of the Whitehaven and Millom County Court in addition. Both appointments date from the 10th March. Mr. Wilson was admitted a solicitor in 1905, and Mr. Curwen in 1901.

The following promotions and transfers have taken place in the Colonial Legal Service: Mr. L. E. C. Evans, Relieving President of District Court, Palestine, to be Deputy Legal Adviser, Federated Malay States; Mr. S. A. R. McKinstry, Attorney-General, British Honduras, to be Crown Counsel, Nigeria; Mr. N. A. Worley, Solicitor-General, to be Puisne Judge, Straits Settlements.

Notes.

The Law Society's School of Law will open for the Summer Term on 24th March. Detailed particulars can be obtained from the Secretary to the Principal.

An obituary notice in *The Times* recently referred to the death, on the 6th March, of Edward Crawley, "for sixty-six years Clerk and Cashier to Eland, Nettleship & Butt, solicitors, of 26, Lincoln's Inn Fields, London, W.C.2."

A scarcity of barristers was reported at Cheshire Quarter Sessions Appeals Court recently, says *The Times*. No barristers were present, and Mr. H. B. Lees, a Birkenhead solicitor, who had been instructed by the police in one appeal, said that he and another advocate had been trying to obtain counsel for three days without success. The Chairman said that the matter would be considered at the next quarter sessions.

Wills and Bequests.

The Hon. Sir Reginald William Coventry, K.C., Recorder of Stoke-on-Trent, of Norcote, Cirencester, and the Temple, E.C., left £22,020, with net personalty £16,585.

Court Papers.

SUPREME COURT OF JUDICATURE.

Rota of Registrars in Attendance on

Date.	Emergency Rota.	Appeal Court No. I.	Mr. Justice Farwell.
	Mr.	Mr.	Mr.
Mar. 17	Jones	More	Blaker
,, 18	Hay	Blaker	Andrews
,, 19	More	Andrews	Jones
,, 20	Blaker	Jones	Hay
,, 21	Andrews	Hay	More
,, 22	Jones	More	Blaker

	Group A.		Group B.	
	Mr. Justice Bennett. Non-Witness.	Mr. Justice Simonds. Witness.	Mr. Justice Uthwatt. Non-Witness.	Mr. Justice Morton. Witness.
	Mr.	Mr.	Mr.	Mr.
Mar. 17	Hay	More	Andrews	Jones
,, 18	More	Blaker	Jones	Hay
,, 19	Blaker	Andrews	Hay	More
,, 20	Andrews	Jones	More	Blaker
,, 21	Jones	Hay	Blaker	Andrews
,, 22	Hay	More	Andrews	Jones

Stock Exchange Prices of certain Trustee Securities.

Bank Rate (26th October, 1939) 2%. Next London Stock Exchange Settlement Thursday, 20th March, 1941.

	Div. Months.	Middle Price 12 Mar. 1941.	Flat Interest Yield.	† Approximate Yield with redemption
			£ s. d.	£ s. d.
ENGLISH GOVERNMENT SECURITIES.				
Consols 4% 1957 or after	FA	110¼	3 12 5	3 3 1
Consols 2½%	JAJO	77⅜	3 4 3	—
War Loan 3½% 1955–59	AO	100½xd	2 19 8	2 19 1
War Loan 3½% 1952 or after	JD	104¼	3 7 2	3 1 6
Funding 4% Loan 1960–90	MN	114	3 10 2	3 0 7
Funding 3% Loan 1959–69	AO	99xd	3 0 7	3 1 1
Funding 2½% Loan 1952–57	JD	98½	2 15 10	2 17 4
Funding 2½% Loan 1956–61	AO	92xd	2 14 4	3 0 8
Victory 4% Loan Average life 20 years	MS	111	3 12 1	3 4 10
Conversion 5% Loan 1944–64	MN	108⅝	4 12 1	2 0 0
Conversion 3½% Loan 1961 or after	AO	103½	3 7 8	3 5 2
Conversion 3% Loan 1948–53	MS	101½	2 19 1	2 14 10
Conversion 2½% Loan 1944–49	AO	99⅛	2 10 4	2 12 2
National Defence Loan 3% 1954–58	JJ	101½	2 19 1	2 17 3
Local Loans 3% Stock 1912 or after	JAJO	90⅜	3 6 1	—
Bank Stock	AO	346	3 9 4	—
Guaranteed 3% Stock (Irish Land Acts) 1939 or after	JJ	91	3 5 11	—
Guaranteed 2¾% Stock (Irish Land Act, 1903)	JJ	84	3 5 6	—
Redemption 3% 1986–96	AO	95	3 3 2	3 3 10
Sudan 4½% 1939–73 Average life 18½ years	FA	110	4 1 10	3 14 9
Sudan 4% 1974 Red. in part after 1950	MN	108	3 14 1	3 0 3
Tanganyika 4% Guaranteed 1951–71	FA	109	3 13 5	2 18 11
Lon. Elec. T. F. Corpn. 2½% 1950–55	FA	93	2 13 9	3 1 9
COLONIAL SECURITIES.				
*Australia (Commonwealth) 4% 1955–70	JJ	104	3 16 11	3 12 7
Australia (Commonwealth) 3½% 1964–74	JJ	94	3 9 2	3 11 3
Australia (Commonwealth) 3% 1955–58	AO	94	3 3 10	3 9 1
*Canada 4% 1953–58	MS	110	3 12 9	2 19 11
New South Wales 3½% 1930–50	JJ	99	3 10 8	3 12 6
New Zealand 3% 1945	AO	98	3 1 3	3 10 10
Nigeria 4% 1963	AO	107	3 14 9	3 11 1
Queensland 3½% 1950–70	JJ	99	3 10 8	3 11 1
*South Africa 3½% 1953–73	JD	102	3 8 8	3 6 0
Victoria 3½% 1929–49	AO	99	3 10 8	3 12 8
CORPORATION STOCKS.				
Birmingham 3% 1947 or after	JJ	84	3 11 5	—
Croydon 3% 1940–60	AO	92	3 5 3	3 11 10
Leeds 3¼% 1958–62	JJ	97	3 7 0	3 9 1
Liverpool 3½% Redeemable by agreement with holders or by purchase	JAJO	96	3 12 11	—
London County 3% Consolidated Stock after 1920 at option of Corporation	MJSD	87½	3 8 7	—
*London County 3½% 1954–59	FA	102	3 8 8	3 5 11
Manchester 3% 1941 or after	FA	83	3 12 3	—
Manchester 3% 1958–63	AO	95	3 3 2	3 6 2
Metropolitan Consolidated 2½% 1920–49	MJSL	98	2 11 0	2 15 1
Met. Water Board 3% "A" 1963–2003	AO	88	3 8 2	3 9 5
Do. do. 3% "B" 1934–2003	MS	89½	3 7 0	3 8 1
Do. do. 3% "E" 1953–73	JJ	92	3 5 3	3 8 3
Middlesex County Council 3% 1961–66	MS	94	3 3 10	3 7 2
*Middlesex County Council 4½% 1950–70	MN	107	4 4 1	3 10 7
Nottingham 3% Irredeemable	MN	83	3 12 3	—
Sheffield Corporation 3½% 1968	JJ	101	3 9 4	3 8 10
ENGLISH RAILWAY DEBENTURE AND PREFERENCE STOCKS.				
Great Western Rly. 4% Debenture	JJ	104½	3 16 7	—
Great Western Rly. 4½% Debenture	JJ	113¾	3 19 4	—
Great Western Rly 5% Debenture	JJ	122¾	4 1 8	—
Great Western Rly. 5% Rent Charge	FA	118	4 4 9	—
Great Western Rly. 5% Cons. Guaranteed	MA	113½	4 8 1	—
Great Western Rly. 5% Preference	MA	84½	5 18 4	—

*Not available to Trustees over par.

† In the case of Stocks at a premium, the yield with redemption has been calculated at the earliest date; in the case of other Stocks, as at the latest date.